(REPORTABLE)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8019 OF 2009
(Arising out of Special Leave Petition
(C) No. 3755 OF 2008)

M/s. RAVINDRA KUMAR GUPTA
& COMPANY ....APPELLANT(S)

VERSUS

UNION OF INDIA .....RESPONDENT(S)

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. Leave granted.

2. Challenge in this appeal is to the Judgment dated 10.7.2007 of the Division Bench of the High Court of Uttrakhand at Nanital whereby the Appeal from Order (AO) No.322 of 1998 New No.242 of 2001 filed by Union of India challenging the award of the arbitrator has been partly allowed.

3. The grievance made by the appellant before us is that the High Court travelled beyond its jurisdiction in re-appreciating the evidence led by the parties before the arbitrator and by substituting its own conclusions for the conclusions recorded by the arbitrator. It is submitted by the learned counsel for the appellant that the award of the Labour Court had been made the rule of the court by the Court of Civil Judge, Sr. Division, Roorkee (hereinafter referred to as the Civil Court). While considering the objections raised by the Union of India, the Civil Court took due notice of the evidence led by the parties before the arbitrator. It has been specifically held that the arbitrator has not acted beyond the scope of the reference nor can it be said that the arbitrator has misconducted himself in law or procedure.

4. We may notice here the relevant facts.

The appellant (hereinafter referred to as a contractor), was allotted certain civil works on 22.3.1988. Initially, the work was scheduled to be completed on or before 28.06.1989. However by mutual agreement, the period of contract was extended from time to time and finally till 5.11.1990. The work was completed on 3.11.1990.

5. Disputes arose between the parties after completion of the work regarding the work and payment for the same. The contractor invoked the arbitration clause contained in Clause 70 of the agreement, dated 22.3.1988. Necessary claim was filed before the sole arbitrator under the Indian Arbitration Act, 1940 on 21.4.1994. Both the parties participated in the proceedings.

6. The arbitrator, after elaborate discussion of the entire evidence led by the parties, passed the award dated 30.10.96.

7. Thereafter the contractor filed Original Suit No.184/96 in the Civil Court with a prayer for making the award of the sole arbitrator rule of the Court. The Union of India also filed Miscellaneous Suit No.147/96, with a prayer for setting aside the Award. Both the suits were heard together by the Civil Court. In the miscellaneous suit it was pleaded by the Union of India that the award of the arbitrator is infirm being against the law and available evidence. As such the arbitrator has misconducted himself in law. The main issue between the parties is with regard to claim No.5. It was stated by Union of India that the arbitrator had acted beyond its jurisdiction by allowing claim No.5 of the contractor, contrary to the provision contained in Clause 11(c) of IAFW 2249, which is part of

the agreement, dated 22.3.1988. The Civil Court duly framed issues. It took due notice of the objections raised by the Union of India. It was submitted on behalf of Union of India, that the arbitrator cannot accept any claim going beyond the scope of the dispute entrusted and referred to him. The Civil Court specifically observed as follows:

> "In the present case, dispute of loss suffered by the decree holder for the hold-ups and delay was referred to the arbitrator and the ld. Arbitrator has decided this dispute within his jurisdiction."

8. It has been specifically observed by the Civil Court that the parties had placed the case before the arbitrator on the point in issue. It is further observed that the arbitrator has passed the award giving reasons in detail. Therefore it cannot be said that the arbitrator has acted beyond the scope of reference.

9. The Civil Court took due notice of the settled propositions of law that at the time of hearing of objections under Section 30 of the Arbitration Act, 1940 the Court jurisdiction of the Court is limited. It has also been noticed that the Court cannot hear the objections against the award as an appellate court, as the arbitrator is the

final arbiter of the dispute referred to him. After noticing the legal position and after examining clauses of the agreement, the award has been made rule of the court.

10. The findings of the Civil Court were challenged by the Union of India in appeal before the High Court, which has been partly allowed. In partly allowing the appeal the Division Bench has set aside the finding recorded by the arbitrator by merely stating as follows:

> "So far as the contention of learned counsel for the appellant that claim No.5 is against clause 11(c) of IAFW, which is part of the agreement, is concerned, we have carefully perused the award given by the Arbitrator as well as the impugned judgment of the Court below. Claim 5 was for loses due to hold-ups and delay in the work. The Union of India in reply before the Arbitrator stated that the delay in execution of work was due to default of the contractor himself. He had not employed sufficient manpower and resources to complete the work in time. There is no reason to disregard this statement on behalf of Union of India/appellant. We find that the Arbitrator acted unreasonably and irrationally in ignoring the limits and the provisions of the contract as submitted by the learned counsel for the appellant."

11. We are of the considered opinion that the High Court committed a serious error in re-appreciating the evidence led by the

parties before the arbitrator. This evidence was duly scrutinized and evaluated by the arbitrator. With regard to claim No.5, the arbitrator has given elaborate reasons. Therefore, finding recorded by the arbitrator cannot said to be either perverse or based on no evidence. A firm finding has been recorded that under claim No.5 there was default and delay on the part of Union of India with respect to:

(i) The payment of RARs final bill.

(ii) Delay in appointing agency for ATT.

(iii) Delay in giving decision.

(iv) Increase in height of Tent plinth (given late).

12. This conclusion has been erroneously substituted by the High Court with its own opinion on appreciation of the evidence. Such a course was not permissible to the High Court while examining objections to the award under Section 30 of the Arbitration Act, 1940.

13. The law with regard to scope and ambit of the jurisdiction of the courts to interfere with an arbitration award has been settled in a catena of judgments of this Court. We may make a reference here

only to some of the judgments. In the case of ***State of Rajasthan*** ***vs*** ***Puri Construction Company Limited. and Anothers.*** (**1994) 6 SCC 485,** this Court observed as follows:

> "The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In *Sudarsan Trading Co. v. Govt. of Kerala* 1989 Indlaw SC 463 it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of

evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator.

In the case of *Municipal Corpn. Of Delhi v. Jagan Nath Ashok Kumar* 1987(4) SCC 497, it has been held by this Court that appraisement of evidence by the arbitrator is ordinarily never a matter which the court questions and considers. It may be possible that on the same evidence the court may arrive at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award. It has also been held in the said decision that it is difficult to give an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasies of the individual and the time and circumstances in which thinks. In cases not covered by authority, the verdict of a jury or the decision of a judge sitting as a jury usually determines what is 'reasonable' in each particular case. The word reasonable has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably knows or ought to know. An arbitrator acting as a judge has to exercise a discretion informed by tradition, methodized by analogy disciplined by system and subordinated to the primordial necessity or order in the social life. Therefore, where reasons germane and relevant for the arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable."

14. In the case of ***Arosan Enterprises Ltd. vs. Union of India,*** ***(1999) 9 SCC 449****, t*his Court upon analysis of numerous earlier decisions, held as follows:

> "Be it noted that by reasons of a long catena of cases, it is now a well-settled principle of law that re-appraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the Court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.
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> The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The Court as a matter of fact cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined……".

15. This view has been reiterated by this Court in the case of ***Oil & Natural Gas Corporation Ltd. vs. SAW Pipes Ltd.*** as follows:

> "In the light of the aforesaid decisions, in our view, there is much force in the contention raised by the learned counsel for the appellant. However, the learned senior counsel Mr. Dave submitted that even if the award passed by the arbitral tribunal is erroneous, it is settled law that when two views are possible with regard to interpretation of statutory provisions and or facts, the Court would refuse to interfere with such award.
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> It is true that if the arbitral tribunal has committed mere error of fact law in reaching its conclusion on the disputed question submitted to it for adjudication then the Court would have no jurisdiction to interfere with the award. But, this would depend upon reference made to the arbitrator : (a) if there is a general reference for deciding the contractual dispute between the parties and if the award is based on erroneous legal proposition, the Court could interfere; (b) It is also settled law that in a case of reasoned award, the Court can set aside the same if it is, on the face of it, erroneous on the provision of law or its application; (c) If a specific question of law is submitted to the arbitrator, erroneous decision in point of law does not make the award bad, so as to permit of its being set aside, unless the Court is satisfied that the arbitrator had proceeded illegally."

16. In the ***M/s. Kwality Manufacturing Corporation vs. Central Warehousing Corporation*** it was held:

> "At the outset, it should be noted that the scope of interference by courts in regard to arbitral awards is limited. A court considering an application under Section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it re-assess or re-appreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act. Therefore, on the contentions urged, the only question that arose for consideration before the High court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings."

17. Again it is reiterated in the judgment of ***Madhya Pradesh Housing Board vs. Progressive Writers and Publishers*** **(2009) 5 SCC** as follows:

> "The finding arrived at by the arbitrator in this regard is not even challenged by the Board in the proceedings initiated by it under Section 30 of the Act. It is fairly well settled and needs no restatement that the award of the arbitrator is ordinarily final and the courts hearing applications under Section 30 of the Act do not exercise any appellate jurisdiction. Reappraisal of evidence by the court is impermissible."

18. In this case, the Supreme Court notice the earlier judgment in the case of ***Ispat Engineering & Foundry Works, B.S. City,***

***Bokaro* vs. *Steel Authority of India, B.S. City, Bokaro* [(2001) 6 SCC 347]** wherein it was held as follows:

> "4. Needless to record that there exists a long catena of cases through which the law seems to be rather well settled that the reappraisal of evidence by the court is not permissible. This Court in one of its latest decisions [Arosan Enterprises Ltd. v. Union of India (1999) 9 SCC 449] upon consideration of decisions in Champsey Bhara & Co. v. Jivraj Balloo Spg. & Wvg. Co. Ltd. [Air 1923 PC 66], Union of India v. Bungo Steel Furniture (P) Ltd. [1967 1 SCR 324], N. Chellappan v. Secy., Kerala SEB [(1975) 1 SCC 289], Sudarshan Trading Co. v. Govt. of Kerala [(1989) 2 SCC 38], State of Rajasthan v. Puri Construction Co. Ltd. [(1994) 6 SCC 485] as also in Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan [(1999) 5 SCC 651] has stated that reappraisal of evidence by the court is not permissible and as a matter of fact, exercise of power to reappraise the evidence is unknown to a proceeding under Section 30 of the Arbitration Act, 1940. This court in Arosan Enterprises categorically stated that in the event of there being no reason in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, interference would still be not available unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. This Court went on to record that in the event, however, two views are possible on a question of law, the court would not be justified in interfering with the award of the arbitrator if the view taken recourse to is a possible view. The observations of Lord Dunedin in Champsey Bhara stand accepted and adopted by this Court

> in Bungo Steel Furniture to the effect that the court had no jurisdiction to investigate into the merits of the case or to examine the documentary and oral evidence in the record for the purposes of finding out whether or not the arbitrator has committed an error of law. The court as a matter of fact, cannot substitute its own evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties."

19. In our opinion, the impugned judgment of the High Court does not fall within the limited jurisdiction available to the Court for interference in the award of an arbitrator.

20. For the aforesaid reasons the appeal is allowed. The impugned judgment of the High Court is set aside.

.....J
(TARUN CHATTERJEE)

.....J
(SURINDER SINGH NIJJAR)

NEW DELHI
DECEMBER 03, 2009